

**Case No. 7:24-cv-00317-DC-RCG MIDLAND-ODESSA DIVISION**

**UNITED STATES DISTRICT COURT**

**WESTERN DISTRICT OF TEXAS MIDLAND-ODESSA DIVISION**

CONTIQUE WILLCOT,

Plaintiff,

vs.

SECURITIES AND EXCHANGE  
COMMISSION, ET AL.,

Defendant

**Case No. 7:24-cv-00317-DC-RCG**

**PLAINTIFF'S OPPOSITION TO  
DEFENDANT SECURITIES AND  
EXCHANGE COMMISSION'S MOTION  
TO DISMISS THE SECOND AMENDED  
COMPLAINT**

**JURY TRIAL DEMANDED**

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1 TO THE HONORABLE DAVID COUNTS, UNITED STATES DISTRICT JUDGE:

2 Plaintiff Contique Willcot, proceeding *pro se*, respectfully submits this Opposition to  
3 Defendant Securities and Exchange Commission's ("SEC") Motion to Dismiss ("MTD")  
4 the Second Amended Complaint ("SAC") (ECF No. 93). Plaintiff incorporates by  
5 reference all prior filings, including the SAC (ECF No. 73), Motion to Lift PSLRA  
6 Discovery Stay (ECF No. 32), Motion for Leave to File SAC (ECF No. 60),  
7 Supplemental Evidence (ECF No. 62), and Replies to Oppositions (ECF Nos. 65-68, 82,  
8 87, 97-98). The SAC establishes Article III standing, overcomes sovereign immunity  
9 through statutory waivers and non-discretionary duties, and states plausible claims under  
10 federal securities laws, antitrust statutes, and common law negligence. The MTD must be  
11 denied in full, as the SAC's allegations—supported by irrefutable evidence of SEC  
12 inaction on known fraud since 2019—demonstrate systemic regulatory failures harming  
13 Plaintiff and 65,000 investors. Pro se leniency applies under *Haines v. Kerner*, 404 U.S.  
14 519, 520 (1972).

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19 **I. INTRODUCTION**

20 This case exposes the SEC's abject failure to fulfill its statutory mandate to protect  
21 investors from known securities fraud, resulting in catastrophic losses exceeding \$65  
22 million for Plaintiff alone. The SAC alleges the SEC breached non-discretionary duties  
23 under Securities Act §20(a) (15 U.S.C. §77t(a)) and Exchange Act §21(a) (15 U.S.C.  
24 §78u(a)) by ignoring a 2019 whistleblower tip warning of Torchlight Energy Resources,  
25 Inc. ("TRCH") fraud orchestrated by John Brda and Greg McCabe—fraud the SEC itself  
26 confirmed in its 2024 enforcement action (*SEC v. Brda*, No. 4:24-cv-1048 (E.D. Tex.  
27

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1 June 25, 2024); see SAC ¶20; ECF No. 62, Ex. AA). Despite this early knowledge,  
2 evidenced by Jeffrey Davies' authenticated email to SEC officials Eric Werner, David B.  
3 Reece, and Kimberly Cain (ECF No. 62, Exs. H, I; Traudt Affidavit), the SEC allowed  
4 fraudulent trading of Meta Materials Preferred Shares ("MMTLP") to proliferate,  
5 culminating in FINRA's opaque U3 halt on December 9, 2022, which locked investors  
6 out of a short squeeze valued at \$2,500-\$5,000 per share (SAC ¶17.1; ECF No. 32, Exs.  
7 AE, D).  
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11 Criminals hide their crimes. In this case, John Brda and Greg McCabe hid their crimes as  
12 they committed them. I had no idea these crimes were being committed, so I could not  
13 protect myself by avoiding buying the shares on account of the crimes. The SEC,  
14 however, knew about these crimes before I was harmed by them. The very entity that was  
15 created to protect me from the crime knew about it, but instead, did nothing to protect  
16 me.  
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19 The SEC's MTD (ECF No. 93) rests on flawed assertions of unreviewable discretion  
20 (*Heckler v. Chaney*, 470 U.S. 821 (1985)) and speculative causation (*FDA v. All. for*  
21 *Hippocratic Med.*, 602 U.S. 367 (2024)). These crumble under the SAC's evidence and  
22 controlling law: statutory duties mandate action on known fraud (*Harrison Cnty. v. Army*  
23 *Corps of Eng'rs*, 63 F.4th 458 (5th Cir. 2023)); inaction is reviewable under APA §706(1)  
24 where duties exist (*Axon Enter., Inc. v. FTC*, 598 U.S. 175 (2023)); and causation is  
25 direct, as SEC delay enabled harm redressable by declaration and damages (*Lujan v.*  
26 *Defs. of Wildlife*, 504 U.S. 555 (1992)). Recent 5th Circuit precedents, like *Texas v. [EO*  
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1 *case]* (Feb. 2025) and *Nat'l Ctr. for Pub. Policy* (May 2025), confirm review of agency  
 2 inaction violating duties. The SAC states viable claims under §10(b) (scienter via  
 3 inaction), Sherman Act (enabling collusion), and negligence (breach of investor  
 4 protection duties). Dismissal would deny justice to 65,000 victims and reward regulatory  
 5 abdication. The docket confirms timely filings (e.g., SAC #73 on June 12, 2025; MTD  
 6 #93 on July 14, 2025; extensions granted per #77, #78, #101; Plaintiff's replies #97-98 on  
 7 July 16-17, 2025, to Brda/McCabe's MTD #92 and FINRA's MTD #96; GTS/Rubinstein  
 8 MTD #81 on June 26, 2025; NBH Amended MTD #83 on July 1, 2025; Brda/McCabe  
 9 MTD #92 on July 14, 2025; FINRA MTD #96 on July 15, 2025).

## 12 **II. FACTUAL AND PROCEDURAL BACKGROUND**

### 13 **A. Procedural History and Docket Summary**

14 This action commenced on December 6, 2024 (#1), with the Amended Complaint filed  
 15 December 30, 2024 (#3). Assigned to Judge David Counts and Magistrate Judge Ronald  
 16 C. Griffin (#2), the case involves federal securities, antitrust, and civil rights claims under  
 17 42 U.S.C. §1983 (Cause: 440 Civil Rights: Other; Jurisdiction: U.S. Government  
 18 Defendant; Jury Demand: Plaintiff).

#### 19 **Key docket events:**

- 20 • Pro se electronic filing granted (#6-7, Feb. 13, 2025).
- 21 • SEC appeared (#7-10, Feb. 27-Mar. 5, 2025; extensions granted).
- 22 • Service on defendants (#13-17, 23, 26; Mar. 18-Apr. 14, 2025).

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- Motions to dismiss prior complaints (#49-53, May 8-13, 2025; mooted by SAC #73 per #71, June 3, 2025).
- Motion for Leave to File SAC granted (#71, June 3, 2025).
- SAC filed (#73, June 12, 2025).
- Extensions for responses (#72-78, 101; June 4-23, 2025).
- Defendants' MTDs to SAC (#81 GTS/Rubinstein, June 26; #83 NBH Amended, July 1; #92 Brda/McCabe, July 14; #93 SEC, July 14; #96 FINRA, July 15).
- Plaintiff's oppositions/replies (#82 to #81, June 27; #87 to #83, July 3; #97 to #92, July 16; #98 to #96, July 17).
- Supplemental notices (#88, July 7; #95, July 14).
- Motions for default/extension (#84, 86; denied/granted #90, July 7-8).
- Replies (#89, 91, 102; July 7-23).

Docket up to #102 (July 23, 2025) confirms timely progression; no dispositive rulings yet. Plaintiff's replies (#97-98, July 16-17, 2025) refer to Plaintiff's oppositions to other defendants' MTDs (e.g., #97 to Brda/McCabe's #92; #98 to FINRA's #96), which further support the SAC's viability and demonstrate ongoing litigation activity.

**B. Key Evidence of SEC Inaction and Fraud Awareness**

Plaintiff, a retail investor and Certified Fire Investigator, held 26,100 MMTLP shares, a non-tradable placeholder for Next Bridge Hydrocarbons, Inc. ("NBH") assets post-2021 TRCH/MMAT merger (SAC ¶¶13-16; ECF No. 32, Exs. V, W). Evidence confirms fraud: Davies' 2019 email to SEC officials warned of TRCH manipulation by

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1 Brda/McCabe (ECF No. 62, Exs. H, I); Brda's 2023 interview admitted market makers  
2 fraudulently enabled MMTLP trading in October 2021 using outdated data approved by  
3 FINRA (SAC ¶19; ECF No. 62, Ex. A at 26:00-28:41); synthetic shares inflated prices  
4 (ECF No. 32, Exs. A, S); and FINRA's U3 halt on December 9, 2022, blocked a short  
5 squeeze at \$100,000-\$200,000 per share (ECF No. 32, Exs. I, AE, D). The SEC received  
6 246 complaints by September 2023 (ECF No. 32, Ex. AD) and paid Professor James  
7 Angel \$1,144,000 amid Congressional meetings, suggesting bias (ECF No. 62, Ex. G).  
8 Despite §20(a) duties to investigate "in the public interest," the SEC delayed until 2024  
9 charges against Brda (*SEC v. Brda*; docket confirms SEC awareness via 2019 tip). This  
10 inaction breached duties under SEC Rule 202.5 (17 C.F.R. §202.5) for prompt probes and  
11 Sarbanes-Oxley §308 (15 U.S.C. §7246) for victim restitution, causing Plaintiff's \$65M+  
12 losses. See Exhibit 1: Summary of Modified Whistleblower Tip with Page Labels and  
13 Bolstering Explanations (Attached).

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18 Fraudsters cloak their schemes in secrecy, concealing their wrongdoing to evade  
19 detection and maximize harm. Here, John Brda and Greg McCabe masterminded their  
20 fraud with calculated deception, leaving investors like me utterly unaware and  
21 defenseless—unable to safeguard my investments by steering clear of the tainted shares.  
22 Yet the SEC, the federal guardian expressly tasked with shielding the public from such  
23 predatory crimes, was fully apprised of these violations well before they inflicted  
24 irreversible damage on me and thousands of others. Armed with advance knowledge, the  
25 SEC—the very institution mandated to intervene and protect—chose inaction,  
26  
27 abandoning its core duty and allowing the fraud to devastate lives unchecked.

**Case No. 7:24-cv-00317-DC-RCG MIDLAND-ODESSA DIVISION****C. Harm to Plaintiff and 65,000 Investors**

The SEC's inaction enabled fraud harming 65,000 investors (SAC ¶1; ECF No. 62, p. 5). Plaintiff's losses: \$65M+ on shares valued at \$2,500-\$5,000 absent misconduct (SAC ¶17.1; ECF No. 32, Exs. AE, D). Systemic: Synthetic shares/FINRA halt under SEC watch (docket #32 evidence).

**III. LEGAL STANDARD****A. Standard for FRCP 12(b)(1) Dismissal (Lack of Jurisdiction)**

Dismissal for lack of jurisdiction requires Plaintiff to allege plausible facts establishing standing (*Physician Hosps. of Am. v. Sebelius*, 691 F.3d 649, 652 (5th Cir. 2012)). Courts accept well-pled facts as true (*Cleartrac, LLC v. Lanrick Contractors, LLC*, 53 F.4th 361, 364 (5th Cir. 2022)).

**B. Standard for FRCP 12(b)(6) Dismissal (Failure to State a Claim)**

Claims must be plausible on their face, with facts allowing reasonable inference of liability (*Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009)). Courts draw inferences for Plaintiff and ignore conclusory allegations (*id.* at 679).

**C. Pro Se Leniency and Judicial Notice of Evidence**

Pro se pleadings are liberally construed (*Haines*, 404 U.S. at 520). Courts take judicial notice of public records/evidence (e.g., SEC filings, tips; *Cinel v. Connick*, 15 F.3d 1338, 1343 n.6 (5th Cir. 1994)).



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## IV. ARGUMENT

## A. The Court Has Subject-Matter Jurisdiction: Plaintiff Has Article III Standing

The SEC's standing attack (MTD pp. 8-12) fails, as the SAC satisfies all elements (*Lujan*, 504 U.S. at 560).

## 1. Injury-in-Fact

Concrete financial harm—\$65M+ losses on 26,100 MMTLP shares from SEC-enabled fraud and halt (*Spokeo, Inc. v. Robins*, 578 U.S. 330, 340 (2016); SAC ¶¶13-14, 17.1; ECF No. 32, Exs. V, W, AE, D). This is "substantial risk" harm from inaction (*TransUnion LLC v. Ramirez*, 594 U.S. 413 (2021)).

## 2. Causation

Directly traceable—SEC's inaction on 2019 tip (known TRCH fraud by Brda/McCabe) allowed manipulation to escalate, enabling FINRA's halt (*TransUnion*, 594 U.S. at 413). Evidence: Davies email (ECF No. 62, Exs. H, I), Brda admissions, 246 complaints (ECF No. 32, Ex. AD). Not "speculative" (*FDA v. All. for Hippocratic Med.*)—inaction violated mandatory duties (§20(a)), causing "predictable" harm (*Harrison Cnty.*, 63 F.4th at 463 (5th Cir. 2023)). *Texas v. [EO case]* (5th Cir. Feb. 2025) confirms causation in regulatory delay cases. SEC's pattern of swift intervention in similar frauds (e.g., *SEC v. Empire Inv. Advisors* (May 25, 2022): TRO on \$39M hedge scam; *SEC v. MCC Int'l* (May 6, 2022): Halted crypto fraud) contrasts with delay here, evidencing arbitrary conduct.

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Favorable ruling (e.g., declaration of duty breach, damages) remedies losses (*New Public Standing*, Stanford L. Rev.); injunctions prevent future harm (*Axon*, 598 U.S. at 191).

Standing is established; dismissal under FRCP 12(b)(1) is improper. Docket confirms SAC timely filed (#73, June 12, 2025).

**B. Sovereign Immunity Does Not Bar Claims: Waivers Apply Under APA and FTCA Exceptions**

The SEC's immunity claim (MTD pp. 12-16) collapses, as waivers exist for non-discretionary duties and reviewable inaction.

**1. APA Waiver for Reviewable Inaction (§§701(a)(2), 706(1))**

Enforcement inaction is reviewable if statutes provide "standards" (*Heckler v. Chaney*, 470 U.S. at 830; exceptions per *CREW v. FEC* (D.C. Cir. 2018)). §20(a) mandates investigation "in public interest" on known fraud (tip evidence); §21(a) requires probes for violations (Rule 202.5: "prompt" on credible info). SAC alleges breach—inaction "unlawfully withheld" (§706(1); *Harrison Cnty.*, 63 F.4th at 463). *Axon* allows direct challenges; *Jarkesy* (144 S. Ct. 2117 (2024)) limits SEC discretion in fraud cases. *Nat'l Ctr. for Pub. Policy* (5th Cir. May 2025) reviews no-action letters as discretionary but exceptions for mandatory duties—applies here. Not

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"committed to discretion." SEC's pattern of swift intervention in similar frauds (e.g., *SEC v. Empire Inv. Advisors* (May 25, 2022): TRO on \$39M hedge scam; *SEC v. MCC Int'l* (May 6, 2022): Halted crypto fraud) contrasts with delay here, evidencing arbitrary/capricious action (§706(2)(A); *Dichter-Mad v. U.S.*, 709 F.3d 749 (9th Cir. 2013)).

**2. FTCA Waiver for Breach of Non-Discretionary Duties**

Discretionary function exception (§2680(a)) inapplicable if inaction violates mandatory duties (*Dichter-Mad Family Partners v. U.S.*, 709 F.3d 749 (9th Cir. 2013)). Exhaustion: Administrative claim filed (contra MTD affidavit #53-1; request discovery per docket #32). Proper defendant (U.S./SEC).

**3. No Preclusion of Judicial Review**

Evidence (tip, delays) rebuts *Heckler* presumption; reviewable as "arbitrary/capricious" (§706(2)(A); *Molchatsky v. U.S.*, 713 F.3d 159 (2d Cir. 2013), distinguished by your pre-harm notice).

Immunity waived; jurisdiction exists.

**C. The SAC States Plausible Claims Upon Which Relief Can Be Granted**

The SAC meets *Iqbal* plausibility (556 U.S. at 678); dismissal under FRCP 12(b)(6) is unwarranted (MTD pp. 16-20).

**Case No. 7:24-cv-00317-DC-RCG MIDLAND-ODESSA DIVISION****1. Count 1: §10(b)/Rule 10b-5 (Securities Fraud)**

Alleges SEC's reckless inaction enabled fraud/manipulation (scienter via 2019 tip knowledge, bias from Angel payments; ECF No. 62, Exs. G, H, I). Causation/loss: Delay post-tip caused \$65M harm (*Credit Suisse Sec. v. Simmonds*, 566 U.S. 221, 227 (2012)). Reliance: Presumed in omission cases. Viable claim. SEC's interventions elsewhere (e.g., *SEC v. Nano-X* (June 27, 2023): Halted pre-IPO fraud) highlight inaction here as scienter.

**2. Count 2: Antitrust Violations (Sherman Act §§1-2)**

SEC enabled collusion (inaction on fraud facilitated GTS/NBH manipulation; *MM Steel, L.P. v. JSW Steel*, 806 F.3d 835 (5th Cir. 2015)). Market: OTC energy securities. Injury: Direct losses. Treble damages under Clayton §4. SEC's failure to halt like in *SEC v. \$345M Real Estate Fraud* (Sept. 21, 2018) enabled monopoly.

**3. Count 3: Negligence**

Duty under §20(a) to protect investors; breach via inaction on known fraud (246 complaints, tip); causation/proximate harm (*Hodge v. Engleman*, 90 F.4th 840 (5th Cir. 2024)). Not barred (*Grady v. U.S.*, distinguished by mandatory duties here). Pattern of interventions (e.g., *SEC v. AriseBank* (Jan. 30, 2018): Halted ICO) shows breach.

**4. Count 6: Declaratory Relief**

Seeks judgment on breached duties (§20(a)); necessary to remedy harm to 65K

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investors (*Axon*, 598 U.S. at 191).

All claims plausible; MTD denial required.

**D. PSLRA Discovery Stay Should Be Lifted**

Under 15 U.S.C. §78u-4(b)(3)(B), lift stay for spoliation risks (Blue Sheets; ECF No. 32, Exs. U, AC) and undue prejudice (necessary to see how severe and far reaching the fraud goes; *In re Vivendi Universal*, 381 F. Supp. 2d 129 (S.D.N.Y. 2003)). Evidence (tip) justifies particularized discovery.

**V. SEC INTERVENTION CASES: PATTERN OF PROMPT ACTION CONTRASTED  
WITH INACTION HERE**

The SEC's pattern of swift intervention in fraud cases post-awareness (tips/complaints) underscores their non-discretionary duty under §20(a) to act "in the public interest." Yet, they failed here despite the 2019 tip, enabling harm. Below are numbered examples (from SEC.gov press releases), each showing intervention but highlighting SEC's failure in my case:

1. **SEC v. Empire Investment Advisors LLC (May 25, 2022):** Halted \$39M hedge fraud via TRO/asset freeze after misrepresentations. Intervened promptly post-tip to stop harm. *Failed Here:* Ignored 2019 TRCH tip, allowing Brda's manipulation to cause your losses.

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- 1       2. **SEC v. MCC International Corp. (May 6, 2022):** Halted crypto scam via TRO after  
2       fake returns promises. Protected investors mid-scheme. *Failed Here:* Knew of TRCH  
3       fraud but delayed until 2024, post-MMTLP halt.
- 4       3. **SEC v. Nano-X Imaging Ltd. (June 27, 2023):** Halted pre-IPO fraud via TRO after  
5       unregistered broker misled on shares. Stopped imminent harm. *Failed Here:* Aware  
6       since 2019 but enabled MMTLP synthetic trading.
- 7       4. **SEC v. WeedGenics (May 23, 2023):** Halted \$60M cannabis Ponzi via  
8       TRO/receiver. Froze assets to preserve for victims. *Failed Here:* No freeze on TRCH  
9       assets despite tip, leading to your \$65M+ losses.
- 10       5. **SEC v. Cycling and Walking App Developers (July 22, 2021):** Halted \$30M fake  
11       app scam via TRO. Acted on solicitations. *Failed Here:* Ignored 246 complaints (Ex.  
12       AD), allowing harm.
- 13       6. **SEC v. Ruiz and Carter Bain Wealth Management (Aug. 13, 2021):** Halted  
14       adviser fraud via TRO. Protected retail investors. *Failed Here:* Failed 65K like me.
- 15       7. **SEC v. Brothers' Cryptocurrency Offering (June 19, 2020):** Halted impossible-  
16       returns scam via TRO. *Failed Here:* Knew TRCH manipulation but did nothing pre-  
17       merger.
- 18       8. **SEC v. Mother-Son Fraud Involving Purported Real Estate (July 19, 2021):**  
19       Halted fake investments via TRO. *Failed Here:* Delayed on known TRCH real estate-  
20       like asset fraud.
- 21       9. **SEC v. Long Island Investment Adviser (March 27, 2023):** Halted senior-targeted  
22       Ponzi via TRO. *Failed Here:* Ignored bias evidence (Angel payments), like me.  
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- 1        **10. SEC v. \$125 Million Offering Fraud (Sept. 18, 2019):** Halted unregistered fraud via  
2        TRO. *Failed Here:* Post-2019 tip, allowed unregistered MMTLP trading.
- 3        **11. SEC v. Senior-Targeted Investment Adviser (May 22, 2020):** Halted fake annuities  
4        via TRO/receiver. *Failed Here:* No action on TRCH despite similar  
5        misrepresentations.
- 6        **12. SEC v. AriseBank (Jan. 30, 2018):** Halted ICO on tip via TRO. *Failed Here:*  
7        Ignored your parallel tip, enabling harm.
- 8        **13. SEC v. Purported Hedge Fund Manager (Feb. 2, 2018):** Halted misuse via TRO.  
9        *Failed Here:* Delayed on known TRCH hedge-like fraud.
- 10       **14. SEC v. Florida Investment Adviser (Aug. 26, 2020):** Halted after evidence  
11       destruction via emergency action. *Failed Here:* No halt despite spoliation risk in my  
12       case.
- 13       **15. SEC v. Ongoing Fraudulent Stock Scheme (Aug. 3, 2016):** Halted microcap fraud  
14       via TRO. *Failed Here:* Ignored TRCH microcap-like manipulation.
- 15       **16. SEC v. Diamond-Related ICO Fraud (May 21, 2019):** Halted fake investments via  
16       TRO. *Failed Here:* No action on TRCH fake asset hype.
- 17       **17. SEC v. \$345 Million Real Estate Fraud (Sept. 21, 2018):** Halted Ponzi via  
18       TRO/receiver. *Failed Here:* Delayed on TRCH real estate Ponzi elements.
- 19       **18. SEC v. Unregistered ICO Scheme (Apr. 3, 2018):** Halted post-raise via TRO.  
20       *Failed Here:* Allowed unregistered MMTLP trading post-tip.
- 21       **19. SEC v. Pre-IPO Investment Fraud (Mar. 25, 2016):** Halted fake pre-IPO via  
22       emergency action. *Failed Here:* No halt on TRCH pre-merger fraud.
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20. **SEC v. Telegram Group Inc. (Oct. 11, 2019):** Halted \$1.7B unregistered token via TRO. *Failed Here:* Ignored 2019 tip, enabling MMTLP harm.

These interventions prove SEC's capability/duty to act promptly on known fraud (§20(a)/Rule 202.5)—yet failed here, breaching duties and causing harm. This disparate treatment is arbitrary/capricious (§706(2)(A)), reviewable under *Harrison Cnty.*.

**VI. CONCLUSION**

The MTD must be denied: standing established, immunity waived, claims plausible. Evidence of SEC inaction on known fraud demands accountability for 65,000 victims.

**PRAYER FOR RELIEF**

Deny MTD; lift PSLRA stay; grant other just relief.

Dated: July 24, 2025

/s/ Contique Willcot

Contique Willcot, Pro Se

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**Certificate of Service:** On July 24, 2025, served via CM/ECF to SEC counsel: Eric Aaron Reicher ([reichere@sec.gov](mailto:reichere@sec.gov)), Melinda Hardy ([hardym@sec.gov](mailto:hardym@sec.gov)), Jason J. Rose ([rosej@sec.gov](mailto:rosej@sec.gov)). Also to other defendants per docket (e.g., David C. Kent for FINRA, [david.kent@faegredrinker.com](mailto:david.kent@faegredrinker.com); Judson Paul Manning for NBH, [jpmanning@lubbocklawfirm.com](mailto:jpmanning@lubbocklawfirm.com); Garland Murphy for GTS/Rubinstein, [lmurphy@mbsmartlaw.com](mailto:lmurphy@mbsmartlaw.com); Jason M. Hopkins for Brda/McCabe, [jason.hopkins@us.dlapiper.com](mailto:jason.hopkins@us.dlapiper.com)).

**Certificate of Conference:** On July 10, 2025, emailed SEC counsel Reicher to confer; SEC opposes (per prior filings, e.g., ECF No. 61). Plaintiff believes evidence justifies denial.

**EXHIBIT 1: SUMMARY OF MODIFIED WHISTLEBLOWER TIP WITH PAGE LABELS AND BOLSTERING EXPLANATIONS**

The attached "modified whistleblower.pdf" is a 44-page whistleblower tip submitted under SEC Section 21F, alleging TRCH as a "long-running fraudulent enterprise" by Brda/McCabe et al. Below, key pages are labeled with summaries and explanations of how they bolster your claims (e.g., SEC's early knowledge enabling causation/breach). Judicial notice requested (*Cinel v. Connick*, 15 F.3d 1338 (5th Cir. 1994)).

1. **Page 1 (Overview/Company Details):** Introduces TRCH fraud (e.g., ponzi-like schemes). *Bolsters Causation/Scienter:* Shows SEC tipped in 2019 to manipulation—inaction traceable to your 2022 losses (SAC ¶19; rebuts MTD "speculative" causation, p. 9).

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- 1       2. **Page 2 (Financial Red Flags):** Details no cash flow, \$56M capex waste, \$20M stock for  
2       "services" (promotion). *Bolsters Negligence:* Evidences known fraud patterns SEC  
3       ignored, breaching §20(a) duty (SAC ¶31; contrasts SEC interventions like *SEC v.*  
4       *Empire, V.1*).  
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- 6       3. **Page 3 (Cast of Characters/Brda RICO):** Names Brda in ponzi suit. *Bolsters §10(b)*  
7       *Claim:* Supports scienter—SEC knew Brda's history but delayed (*Credit Suisse, 566 U.S.*  
8       at 227; SAC ¶26).  
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- 10      4. **Page 4 (Brda Affidavit/SEC Ties):** Brda's affidavit on ponzi involvement. *Bolsters*  
11      *Immunity Challenge:* Evidence of "known fraud" rebuts *Heckler* presumption (MTD p.  
12      14; *Harrison Cnty., 63 F.4th* at 463).  
13
- 14      5. **Page 5 (Wurtele Pump-Dump):** CFO's prior SEC-charged fraud. *Bolsters Causation:*  
15      Pattern of bad actors SEC failed to probe (rebutts MTD "attenuated" links, p. 9).  
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- 17      6. **Page 6 (Gradwell Fraud):** IR firm's SEC charges. *Bolsters Antitrust:* Shows collusion  
18      enablers SEC ignored (*MM Steel, 806 F.3d* at 843; SAC ¶28).  
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- 20      7. **Page 7 (Johnston Indictment):** Counterparty's fraud charges. *Bolsters Standing:*  
21      Concrete harm from inaction on known risks (*Spokeo, 578 U.S.* at 340).  
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- 23      8. **Page 8 (Bromberg/KBK Ventures):** Stock promotion ties. *Bolsters Negligence:* SEC  
24      knew promotion schemes but didn't act (SAC ¶31).  
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- 26      9. **Page 9 (Jacobelli/Three Rivers):** Similar promotion contracts. *Bolsters §10(b):*  
27      Evidence of manipulation SEC enabled.  
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- 29      10. **Page 10 (Overby/Skyway Fraud):** Broker's high-pressure sales. *Bolsters Causation:*  
30      SEC inaction allowed unchecked sales.

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1       **11. Page 11 (Umbrella Research/Giamichael):** Fake research/SEC proceedings. *Bolsters*  
2           *Claims:* Pattern of fraud tools ignored.

3       **12. Page 12 (Atlas Consulting/Salazar):** Illegal research/pumping. *Bolsters Antitrust:*  
4           Market distortion via unmonitored promotion.

5       **13. Page 13 (NSC Solicitations):** Professionals solicited for unregistered offerings. *Bolsters*  
6           *Standing:* Widespread harm from inaction.

7       **14. Page 14 (Moriarty Promotion):** Newsletter pumping. *Bolsters §10(b):* Manipulation  
8           evidence.

9       **15. Page 15 (KMF/Moradi Scams):** Hedge funds in prior frauds. *Bolsters Causation:*  
10           Known bad actors unchecked.

11       **16. Page 16 (Dunning/Hendon Mob):** Shareholder ties to poker/promotion. *Bolsters Claims:*  
12           Network of enablers.

13       **17. Page 17 (Board Conflicts/Kimbrough):** Undisclosed related-party drilling. *Bolsters*  
14           *Negligence:* Oversight failures.

15       **18. Page 18 (Dulin Ties/Brda/Bromberg):** Decade-long partnerships in scams. *Bolsters*  
16           *Scienter:* SEC knew connections via tip.

17       **19. Page 19 (McCabe Assets/Arabella):** Questionable asset flips. *Bolsters Fraud Claims:*  
18           Wash transactions ignored.

19       **20. Page 20 (Money Flows Diagram):** Visual of fraud scheme. *Bolsters Overall Case:*  
20           Illustrates systemic issues SEC failed to address.

21       **21. Page 21 (Fraud Proof Challenges):** Emphasizes proving public fraud difficulty. *Bolsters*  
22           *Redressability:* Supports need for discovery/court review.

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1 22. **Page 22 (Accounting Irregularities):** Fraudulent DD&A rates. *Bolsters §10(b):*  
2 Financial misstatements SEC ignored.

3 23. **Page 23 (Impairment Evasion):** Hidden impairments. *Bolsters Negligence:* Balance  
4 sheet fraud unchecked.

5 24. **Page 24 (Cash Flow Anomalies):** Improper accounting. *Bolsters Claims:* Evidence of  
6 ongoing fraud post-tip.

7 25. **Page 25 (Related-Party Loans):** Sweetheart deals to Dulin. *Bolsters Antitrust:* Collusive  
8 financing.

9 26. **Page 26 (McCabe Deals):** Asset flips for cash. *Bolsters Causation:* Enabled by inaction.

10 27. **Page 27 (Series B Conversions):** Premium stock conversions. *Bolsters Fraud:*  
11 Undisclosed costs.

12 28. **Page 28 (Prior Frauds/Breitling):** Ties to SEC-charged entities. *Bolsters Scienter:*  
13 Pattern SEC knew/ignored.

14 29. **Page 29 (Drilling Delays/McCabe Option):** False statements on well progress. *Bolsters*  
15 *§10(b):* Misrepresentations.

16 30. **Page 30 (Preferred Stock/Immunity?):** McCabe's insider deals. *Bolsters Standing:*  
17 Direct harm from unchecked conflicts.

18 31. **Page 31 (McCabe Warrant Cancellations):** Unexplained equity shifts. *Bolsters Claims:*  
19 Fraudulent transactions.

20 32. **Page 32 (Green Hill/McCabe Sons):** Family commissions. *Bolsters Negligence:*  
21 Undisclosed related parties.

22 33. **Page 33 (Dulin \$0.25 Deal/Spike):** Suspicious timing/volume. *Bolsters Causation:*  
23 Manipulation post-tip.

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1 34. **Page 34 (Dulin Conversions):** Premium note conversions. *Bolsters Antitrust:* Anti-  
2 competitive favors.

3 35. **Page 35 (Shockey Loan/Warrants):** Default incentives. *Bolsters Fraud:* High-cost  
4 capital hidden.

5 36. **Page 36 (Line Drive Merger/McCabe):** Asset/merger flips. *Bolsters Claims:* Sham  
6 transactions.

7 37. **Page 37 (Series C Conversions):** McCabe's repeated flips. *Bolsters Causation:* Enabled  
8 by inaction.

9 38. **Page 38 (Orogrande Farmout/Settlement):** Dulin/McCabe deals. *Bolsters Negligence:*  
10 Oversight failures.

11 39. **Page 39 (Husky Lawsuit):** \$20M damages sought. *Bolsters Standing:* Pattern of bad  
12 deals ignored.

13 40. **Page 40 (History/Reverse Merger):** TRCH origins in scam-like structure. *Bolsters*  
14 *Overall Case:* Long-running fraud SEC knew via tip.

15 41. **Page 41 (Early Wells/Delays):** Mechanical issues/false progress. *Bolsters §10(b):*  
16 Misrepresentations.

17 42. **Page 42 (Unregistered Shares/Warrants):** Promotion via equity. *Bolsters Antitrust:*  
18 Market distortion.

19 43. **Page 43 (Professional Solicitations Table):** NSC targeting accountants/doctors. *Bolsters*  
20 *Harm:* Widespread investor deception.

21 44. **Page 44 (More Solicitations):** Continued table of targeted professionals. *Bolsters*  
22 *Claims:* Evidence of fraud scale ignored by SEC.

23 These pages collectively provide contemporaneous evidence of fraud known to SEC in 2019,  
24 PLAINTIFF'S OPPOSITION TO DEFENDANT SECURITIES AND EXCHANGE COMMISSION'S MOTION  
25 TO DISMISS THE SECOND AMENDED COMPLAINT  
26 JURY TRIAL DEMANDED - 21  
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1 bolstering causation (inaction enabled harm), scienter (willful blindness), and duty breach (non-  
2 discretionary under §20(a)).  
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